

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

AGF MARINE AVIATION & )  
TRANSPORT, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RICHARD C. CASSIN, )  
 )  
Defendant, )  
 )  
CIT GROUP/SALES FINANCING, )  
INC., and UNITED STATES OF )  
AMERICA SMALL BUSINESS )  
ADMINISTRATION, )  
 )  
Intervenors. )  
\_\_\_\_\_ )

Civil No. 2001-49

**ATTORNEYS:**

**Gregory H. Hodges, Esq.**  
*For the Plaintiff,*

**Michael L. Sheesley, Esq.**  
*For the Defendant,*

**Joycelyn Hewlett, AUSA**  
*For the Intervenor United States of America Small Business  
Administration,*

**Carol G. Hurst, Esq.**  
*For the Intervenor CIT Group/Sales Financing, Inc.*

**ORDER**

**GÓMEZ, C.J.**

Before the Court is the application of plaintiff AGF Marine Aviation & Transport ("AGF") for an award of attorneys' fees and costs.

AGF brought this action to void a marine insurance policy held by defendant Richard Cassin ("Cassin"). The policy covered a yacht (the "Falcon") owned by Cassin that sank off the coast of

Grenada. After the Falcon sank, Cassin sought indemnity under his insurance policy with AGF. AGF thereafter filed this action seeking a declaration from this Court that the policy was void *ab initio*.<sup>1</sup> AGF later filed a motion for summary judgment against Cassin.<sup>2</sup> The Court granted AGF's motion.<sup>3</sup> AGF now seeks \$129,752.87 in attorneys' fees and costs.

Title 5, section 541 of the Virgin Islands Code provides:

Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence in the trial; and
- (6) Attorney's fees as provided in subsection (b) of this section.

V.I. CODE ANN. tit. 5, § 541(a) (1986). The statute further provides: "there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto . . . ." *Id.* at (b).

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<sup>1</sup> AGF contended that while investigating whether to honor the insurance policy after Cassin submitted his claim, it discovered facts regarding the purchase price of the Falcon that were allegedly misrepresented by Cassin on his application. Specifically, AGF asserted that it had learned that the purchase price for the Falcon was overstated by Cassin when the insurance policy was drafted.

<sup>2</sup> (See Pl.'s Mot. for Summ. J., July 29, 2004.)

<sup>3</sup> (See Mem. Op., Jan. 23, 2007.)

To determine a fair and reasonable award of attorneys' fees, the Court considers factors including the time and labor involved, skill required, customary charges for similar services, benefits obtained from the service and the certainty of compensation. *Lempert v. Singer*, Civ. No. 1990-200, 1993 U.S. Dist. LEXIS 19923, at \*5 (D.V.I. December 30, 1993; see also *Morcher v. Nash*, 32 F. Supp. 2d 239, 241 (D.V.I. 1998). Reasonable attorneys' fees may include charges for work that was "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 561 (1986); see also *Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 420 (3d Cir. 1993) (noting that reasonable attorneys' fees may include charges for measures necessary to enforce district court judgments as well as other charges "reasonably expended" to advance the litigation).

Applying the standard outlined above, the Court finds that most of the \$129,752.87 in attorneys' fees claimed by AGF was reasonably expended. However, the Court also finds that several items were not reasonable.

For instance, AGF requests reimbursement for conferences between their own attorneys. Such expenses are duplicative, and not to be included in assessments of reasonable fees. See *Morcher*, 32 F. Supp. 2d at 241-42 ("Multiple lawyer conferences, not involving opposing counsel . . . involve duplicative work.").

AGF's request for reimbursement for general itemizations similarly is problematic. These itemizations have several different types of legal work grouped together. Such entries "are so vague as to prevent meaningful judicial review." *Morcher*, 32 F. Supp. 2d at 242-43. Moreover, "these undifferentiated entries hinder the Court in determining whether the time spent on each of the listed activities was reasonable[.]" *Id.* at 243. At least part of those entries is unreasonable.

Finally, AGF requests reimbursement for time anticipated to defend this fee petition. However, attorneys' fees are awarded on the basis of time spent on the case, not that which is anticipated and may not be realized.

In sum, the Court finds that \$44,630 of the fees requested is unreasonable and must be deducted from AGF's requested reimbursement. Accordingly, it is hereby

**ORDERED** that Cassin shall reimburse AGF for attorneys' fees and costs in the amount of \$85,122.87.

**Dated: December 10, 2007**

S\\_\_\_\_\_  
**Curtis V. Gómez**  
**Chief Judge**

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